Means and Methods of Construction

Q: We are often asked while on site visits our opinion on how to accomplish or construct certain items. Should we be worried or not do this?

A: The short answer is “yes,” you should be worried about this.

The typical, and recommended, contract that architects and engineers enter into includes a provision that provides that the design professional will not have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and procedures in connection with the work, since these are the contractors’ responsibility.

This is a statement based on the time-honored distinction between the architect or engineer as the designer and the contractor as the builder. The distinction has origins in the effort to allocate responsibility and assign risk to the party in the best position to manage it. A corollary to this concept is that each responsibility is to be allocated to a single party. To the extent that a party’s services go beyond its contractually defined scope, difficulties can result and unintended liabilities can arise. To the extent that a design professional offers an opinion on how to accomplish or construct elements of the design, that opinion goes to the very heart of means (instruments and equipment) and methods (techniques and procedures), which are, of course, the contractors’ responsibility.

Design professionals should be cautious about staying within their contractual scope of responsibilities and resist straying beyond them. Not only might unintended liabilities be assumed, including, perhaps, most significantly, for worksite safety, but coverage issues may arise under your policy of professional liability insurance, which is intended to cover negligent acts or omissions in the performance of professional services and not those services and work more appropriately performed by contractors.

This discussion represents an ideal and real-world situations can often present less clearly defined and more nuanced dilemmas. How then, should a design professional respond when asked about issues encroaching on means and methods of construction?

Saying “No, I can’t go there.” doesn’t seem to be a very realistic option.

The response can certainly be more helpful than that, but it should focus on clarifying the design vision and clearing up any lack of clarity or ambiguities in the plans and specifications that may have been the driver of the inquiry in the first place. A candid conversation between the design professional and the contractor with each party mindful of their respective roles should, hopefully, resolve the concern and provide the contractor with the information needed to come up with its own means and methods. Documentation of the exchange will, as always, be helpful should any dispute relating to it arise down the road.

For more information please see our Advisory Bulletin Construction Means and Methods

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